SUPREME COURT OF THE UNITED STATES.

No. 245.

JAMES B. BOYLAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Statement of case	4	3
Judgment	7	4
Bond	9	4
Citation	11	6

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William J. Gibson, being sworn, says that he has served a true copy of the within writ of error on Samuel G. Courtney, esq., U. S. attorney for the southern district of New York, and posted copy in the office the clerk of the Circuit Court of the United States for the southern district of New York.

Sworn before me this October, 1867.

Admit serving copy of within, Oct. 19, 1857.
SAM'L G. COURTNEY, *U. S. Att'y.*

The within writ of error is allowed.
Oct. 19, 1867.
SAM'L BLATCHFORD,
District Judge.

Endorsed: Vol. page . U. S. Supreme Court. James B. Boylan *vs.* The United States. Writ of error on appeal. Filed Oct. 19, '67. Filed this October, 1867.

3 U. S. Circuit Court for the southern district of New York.

Pleas before the judge of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, 1867, to wit, of the day of in the year of our Lord one thousand eight hundred and sixty-seven.

Witness the Honorable Samuel Nelson, judge of the said court.
KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that heretofore, to wit, on the day of , 1867, in April term, 1867, before the judges of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came as well the United States of America, by S. G. Courtney, their attorney, and James B. Boylan, by Lewis and Cox, his attorneys, and brought into the said court, before the aforesaid judge thereof, then there, their certain agreement, that an amicable action, as if the said U. S. against the said James B. Boylan, be entered in the said court, to be of the same effect as if the process had been regularly issued, been served and so returned by the marshal, and that the following statement of facts be submitted for the opinion and judgment of the court, to be of the same effect as if the same had been found by special verdict, which said agreement and statement of facts follow in these words, that is to say:

4 Circuit Court of the U. S., southern district of New York.

UNITED STATES *vs.* JAMES B. BOYLAN. } In the Circuit Court of the United States, southern district of New York.

It is agreed that an amicable action in this form be entered in the said court, to be of the same effect as if the process had been regularly issued, been served, and so returned by the marshal; and that the following statement of facts be submitted for the opinion and judgment of the said court, to be of the same effect as if the same had been found by special verdict:

The defendant is a manufacturer of clothing in the fourth collection district of the State of New York, and within this judicial district.

5 On the tenth day of May, anno Domini 1864, defendant entered into a contract with the United States to manufacture for the United States, and to deliver at certain times therein specified, to the proper officer thereof, a certain number of pairs of "cavalry pantaloons," of materials, dimensions, and workmanship described in said contract; and to receive therefor from the United States the price of four dollars and fifty-two cents for each pair.

Under said contract, defendant did so manufacture and deliver, during the month of October, A. D., 1864, eighteen hundred pairs of such "cavalry pantaloons," and did receive for them from the United States the said price.

The said goods were manufactured of materials the cash value of which, in the open market, at the said city of New York, in the said month of October, A. D. 1864, was more than the price received by defendant for the said goods. But the cost of the process of manufacturing said cavalry pantaloons was more than five per cent. of the value of the pantaloons when manufactured. Defendant, in his return of manufactures for the said month of October, A. D. 1864, under the internal revenue laws, made return of the said goods.

The assessor of internal revenue for said district in due form assessed upon said goods an internal revenue tax of four hundred and six dollars and eighty cents, being five per centum ad valorem upon the price received by defendant for the said goods; said assessor claiming to act under the 94th section of the excise law of June 30th, A. D. 1864; and returned the said assessment to the collector of internal revenue for the said fourth district of New York, to be by him collected from the said defendant for the use of the United States.

6 For the said tax of four hundred and six dollars and eighty cents so assessed and so returned for collection, this action is brought.

If the court shall be of the opinion that the said assessment was made in accordance with the proper construction of the provisions of said act, then it is agreed that judgment shall be entered in favor of the United States, for the sum which shall be found to be due to the United States from defendant.

But if the court shall be of opinion that the said assessment was not made in accordance with the proper construction of the provisions of said act, then it is agreed that judgment shall be entered for the defendant.

D. S. DICKINSON,
U. S. District Attorney, Southern District, N. Y.
LEWIS & COX,
Of Counsel for J. B. Boylan.

7 And now at this day, that is to say, on the day of , 1867, in this same term of April, the issue above joined is ordered by the said Circuit Court to be tried at a term thereof appointed to be held at the U. S. court buildings, in the city of New York, before the Honorable James Nelson, associate justice of the Supreme Court of the United States, the judge thereof, at which day and place last above mentioned, before the said judge, came the parties aforesaid, by their respective attorneys aforesaid, where, upon all and singular the premises being seen, and by the court now here fully understood, and mature deliberation being had, it appears to the said court here that the statement of facts aforesaid, and the matters therein contained, are sufficient in law for the said United States to have and maintain their aforesaid action thereof against the said James B. Boylan, whereupon the said United States ought to recover against the said James B. Boylan therein damages by reason of the premises, and because it is sug-
8 gested and proved, and manifestly appears to the court here, that the said United States have sustained damages on account of the not performing, by said James B. Boylan, of his obligation in the premises, to the sum of four hundred and six 80-100 dollars, with interest thereon from the 10 day of December, 1864, to the sum of seventy-five 90-100 dollars, besides their costs and charges by them about this suit in this behalf expended; therefore it is considered that the said United States do recover against the said James B. Boylan their damages aforesaid, to the said sum of four hundred and eighty-two 70-100 dollars, and also thirty dollars for their said costs and charges, by the said court now here adjudged to the said United States, which said damages, costs, and charges, in the whole, amount to five hundred and twelve 10-100 dollars, and that said James B. Boylan in mercy, &c.

Judgm't signed this 10 October, 1867.

R. E. STILWELL,
Dep. Cl'k.

9 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

JAMES B. BOYLAN
ads.
THE UNITED STATES.

Know all men by these presents, that we, Samuel S. Cox and James Milligan, are held and firmly bound unto the above-named

United States in the sum of one thousand one hundred dollars, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 18th day of October, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas, the above-named James B. Boylan, pl'ff in error, has prosecuted a writ of error to the Supreme Court of the United States, to reverse the decision rendered in the above-entitled suit by the judge of the Circuit Court of the United States for the southern district of New York:

Now therefore, the condition of this obligation is such, that if the above-named James B. Boylan shall prosecute said writ in error to effect, and answer all damages and costs if he shall fail to make his plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] S. S. COX.
[L. S.] JAMES MILLIGAN.

Sealed and delivered, and taken and acknowledged, this 18th day of October, 1867, before me.

R. E. STILWELL,
U. S. Com.

10 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Samuel S. Cox and James Milligan, being duly sworn, depose and say that they, the said James Milligan, resides in the eastern district of New York and the said Samuel S. Cox in the south'n dist. of New York, that they are worth the sum of three thousand dollars each, over and above their just debts and liabilities.

JAMES MILLIGAN.

Sworn to this 18th day of Oct, A. D. 1867, before me.

R. E. STILWELL,
U. S. Com'r.

The within bond is hereby approved, as to its form and amount, and the sufficiency of the sureties.

Oct. 19, 1867.

SAM'L BLATCHFORD,
Dist. Judge.

Endorsed: U. S. Circuit Court. James B. Boylan *vs.* The United States. Bond for costs on appeal. Filed this 19th day of Oct., 1867.

11 UNITED STATES OF AMERICA, *ss:*

To Samuel G. Courtney, esq., United States district attorney, acting on behalf of the United States of America as such district attorney for the southern district of New York, greeting :

You are hereby cited and admonished to be at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the southern district of New York, wherein James B. Boylan is plaintiff in error, and the United States defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the party in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this nineteenth day of October, in the year of our Lord one thousand eight hundred and sixty-seven.

SAM'L BLATCHFORD,
District Judge.

12 SOUTHERN DISTRICT OF NEW YORK, *ss:*

W. I. Gibson, being sworn, says that he served a true copy of the within citation on Samuel G. Courtney, U. S. att'y for the southern district of New York.

Sworn before me this October, 1867.

JOHN A. OSBORN,
U. S. Com'r.

Admit service of copy, Oct. 19, 1867.

SAM'L G. COURTNEY,
U. S. Att'y.

Endorsed: U. S. Supreme Court. James B. Boylan *vs.* The United States. Citation on appeal. Filed Oct. 19, '67.

O

Evening Post Steam Presses, 41 Nassau St., cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

James B. Boylan, Plaintiff in Error, *vs.* The United States.	No. 66.

Statement and Points.

Section 96 of the Excise Law of June 30th, 1864, provides that when goods are manufactured from materials which have paid tax, and the increased value of the manufactures does not exceed five per centum *ad valorem*, they shall be exempt from duty.

By section 86, and by all parallel provisions of the law, the basis of taxable value is that of actual sales, where a sale is made at the time the tax is levied. But where no sale is made at that time, as where goods are consumed by the manufacturer, or shipped to a foreign port for sale, the tax is levied on the basis of "the average of the market value of the like goods, wares

and merchandise at the time when the same became liable to duty."

The taxable value of the manufactured goods in this case is the price obtained by actual sales; that is, the contract price. The value of the materials for the purposes of this law is the average of the market value of the like materials at the time of these sales; and the "increased value," if any, is unquestionably the excess of the former over the latter.

But since it is admitted that at the time when these goods "became liable to duty"—if liable at all—the materials were worth more in the market than the price received for the completed goods; the "increased value," therefore, does not exceed five per centum "*ad valorem*," and they are exempt.

Had Mr. Boylan sold the materials in the market, instead of manufacturing and delivering them to the United States, he would have received more than he did receive. That is to say, by the process of manufacture he did not increase their value at all; and an increase of value by that process to the extent of more than five per centum is necessary to render the product taxable.

But it is urged that "the defendant might have made a fair and even an enormous profit upon this transaction, and yet be allowed to obtain exemption." And in what would this profit consist? In the advance in value of materials held by him between the date of the contract and the delivery of the goods. The government desires to introduce a new element into the computation—that of time, and hold the defendant liable on the ground that the goods were increased in value, not by manufacturing them, but by the length of time during which he held them.

Assuming this to be true, it could not render the

goods taxable. If we suppose the tax itself levied on the increased value of any manufacture, no one would doubt that the increase of value *by the process of manufacture* is that which is to be taxed. The manufacturer might have held the materials for ten years, or forty; or might have obtained them by inheritance or by gift; still, the taxable *increased value* is the added value by the process of manufacture. In this case it is admitted that no value was added by this process. What has the tax claimed to do with any additions to their value made by other causes?

Any application of such a principle as is here suggested by the Government is quite impracticable. For example, let a dealer sell to-day two coats, precisely alike, the one made of cloth purchased recently at one dollar, the other of similar cloth purchased a year since at two dollars; the one would be taxable, the other exempt.

Now Government contractors must constantly deliver goods made thus at the same time and from similar materials, but the materials purchased at various times. Shall the liability to taxation depend on the accident of being made from one or another piece of precisely similar goods?

It is objected that the contract price, fixed in May, cannot be compared with the value of the materials in October. But we have nothing to do with the time at which the contract was made. Whether made in October, or May, or at any earlier time, it fixed the price, and at this price the goods were sold in October. The actual sale is the standard of the value, and nothing else can be substituted for it.

Does the Government argue that the goods were *sold* in May? The argument implies it; yet nothing is bet-

ter settled than that "an agreement to sell is not a sale; and therefore no mere promise to sell hereafter amounts to a present sale." (1 Parsons on Contracts, 528.) No property can pass in that which does not exist; the law, therefore, holds that when goods are manufactured under contract the time of sale is the time of delivery and acceptance of the goods.

In the present case, the materials used by defendant in October were his property, and had a recognized market value. He manufactured them for the Government, and received for them a certain price, by "actual sales," this price being less than the value of the materials. Were the goods increased in value more than five per cent. by the manufacture?

The counsel for the Government has not attempted to lay down any other rule for determining the increased value, under Section 96, than that upon which we claim exemption. No other method can be found which at once accords with legal principles and is susceptible of practical application.

Shall the price of the manufactured goods be compared with the price of materials at the date of the contract? But the law fixes the time of sale, that is, of delivery, as the time at which the estimate shall be made. And shall a fact, the increase of value of goods by a certain process, be determined by figures arbitrarily agreed on months before? Or shall we assume that the contractor purchases his materials on the day on which he makes his contract? Contracts are constantly made for future delivery of goods at a price lower than the present value of the materials, in reliance on an intermediate decline. Shall all such contracts be exempted from taxation?

The Government, in order to avoid the exemption of these goods, attempts an explanation of the intent of

Section 96, as connected exclusively with Section 95, which provides for the taxation of certain manufactures only on their increased value. "When the tax is levied only on the increased value of the article, and that is of slight amount, it is manifest that there will be a limit within which the taxation will be burdensome to the consumer while it is not remunerative to Government," remarks counsel for the United States, and infers that the 96th Section was inserted for the purpose of meeting this case.

Unfortunately for this argument, it is directly contradicted by the facts. Section 96, with its proviso, is a part of the original Excise Law of 1863, while section 95 was inserted into the law in July, 1864, after the proviso on which we rest had been for nearly a year in operation.

Finally, it is urged that the construction placed by the Government on this section "is based on the actual cost of production of the article, which is the true and substantial basis of all commercial dealings, and the only foundation on which a revenue system can safely rest." We simply answer that by a familiar principle of political economy, the actual cost of production of an article never was, nor can be, the basis of commercial dealings; but the price determined by the relations of demand and supply. And still less can it be the foundation of a revenue system. By fixing a standard for taxation which is within the knowledge of no one but the tax-payer himself, it would open a wide door to fraud. It would tax most heavily those who, by mistake or accident, were most burdened by the manufacture—that is, those least able to bear it. And it would reverse the intent of an excise on manufactures, which is everywhere declared a tax, not on cost, but on the price obtained by actual sales.

The increased value under section 96 is doubtless to

be estimated, as the Government urges, in the discretion of the Court. But it must be estimated according to the intent of the law, and by some method at once reasonable and capable of practical application. There is but one such method possible; it is to deduct from the price received for the completed goods the market value of the materials at the time of delivery.

This method alone is legal, and accords with the received principle of law—that the time of sale of goods made under contract is the time of delivery; and with the principle of the tax law—that the time of sale is the time at which values are to be estimated.

This method alone is definite, affording a fixed standard, readily intelligible, and accessible in all commercial newspapers. It admits of no disguise, concealment, or fraud.

This method alone is practicable. It avoids the necessity of tracking out, by the evidence of interested parties, the dates of contracts, the actual cost of different lots of materials, and other accidents of business.

This method alone is just. The exemption turns upon the increased value of the goods *by the process of manufacture*, not their increased value *by time*. And to obtain this we must compare the value of the completed article with the value of its material *at the same time*.

It is, therefore, respectfully claimed that the goods in question are exempt from taxation, and that the judgment below should be reversed, and judgment be given for the defendant.

Wm. M. Evarts,
Of Counsel for Plaintiff in Error.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

JAMES B. BOYLAN, *Plaintiff in Error*,
vs.
THE UNITED STATES. } No. 66.

In error to the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a writ of error to a judgment rendered by the circuit court of the United States for the southern district of New York, in an action brought by the United States against James B. Boylan, the plaintiff in error, to recover the sum of $406 80, the amount of the internal revenue tax assessed on certain "cavalry pantaloons," manufactured by him for and under a contract with the United States.

The case was submitted to the circuit court upon a statement of facts, which it was agreed should be of the same effect as if they had been found by a special verdict.

From this statement it appears, that Boylan was a manufacturer of clothing in the city of New York, and

that, on the 10th of May, 1864, he entered into a contract with the United States to manufacture and deliver, at certain times therein specified, to the proper officer of the United States, a certain number of pairs of cavalry pantaloons, for which he was to receive $4 52 per pair; that he manufactured and delivered during the month of October, 1864, under his contract, 1,800 pairs of such pantaloons, and received the contract price therefor from the United States; that these goods were manufactured of materials the cash value of which, in open market, in said city, was more than the price received by him for the goods; that the cost of manufacturing the pantaloons was more than five per centum of their value when manufactured; and that Boylan, in his return of manufactures for the month of October, 1864, under the internal revenue laws, made return of said goods. It further appears, that an internal revenue tax of five per cent. *ad valorem* upon the price received by Boylan for the said goods, amounting to $406 80, was duly assessed thereon, and the assessment transmitted to the collector of internal revenue for the collection district for collection. This suit having been brought to recover the amount of the tax so assessed, judgment was rendered in favor of the United States therefor, with interest thereon from December 10, 1864, and costs, the whole amounting to $512 10. (See printed Transcript, pp. 3 and 4.)

The tax in this case was assessed under the 94th sec-

tion of the internal revenue act of June 30, 1864, (13 Stat., 264, 269,) which enacted as follows:

"That, upon the articles, goods, wares, and merchandise hereinafter mentioned, *except where otherwise provided*, which shall be produced and sold, or be manufactured or made and sold, or be consumed or used by the manufacturer or producer thereof, or removed for consumption or for delivery to others than agents of the manufacturer or producer within the United States or Territories thereof, there shall be levied, collected, and paid the following duties, to be paid by the producer or manufacturer thereof, that is to say:" * * * * * * *
"On ready-made clothing, boots and shoes, gloves, mittens, and moccasins, caps, hats, and bonnets, or other articles of dress for the wear of men, women, or children, five per centum *ad valorem*." [Here follows a proviso which is unimportant in connection with this case.]

By tle 83d section of the act, (13 Stat., 258,) these duties were required to be paid by the manufacturer or producer to the collector of internal revenue within his district, monthly, or on or before a day to be prescribed by the Commissioner of Internal Revenue. (See, also, sections 85 and 86 of the same act.)

The 96th section (13 Stat., 272) exempted from duty "all goods, wares, and merchandise, and articles made or manufactured from materials which have been subject to, and upon which internal duties have been actually paid, or materials imported upon which duties have been paid, or upon which no duties have been imposed by law, where the increased value of such goods, wares, or merchandise, and articles so made or manufactured, shall not exceed the amount of five per centum *ad valorem*."

The 97th section (13 Stat., 273) provided that where the United States is the purchaser under a contract made prior to the passage of the act, (June 30, 1864,) without other provision therein for the payment of duties imposed by law enacted subsequent thereto upon articles to be delivered under such contract, "the certificate of the proper officer of the department by which the contract was made, showing, according to regulations to be prescribed by the Secretary of the Treasury, the articles so purchased by the United States, and liable to such subsequent duty, shall be taken and received, so far as the same is applicable, in discharge of such subsequent duties on articles so contracted to be delivered to the United States and actually delivered according to such contract."

ARGUMENT.

I. The tax on ready-made clothing is five per cent. of the full value, and is a distinct tax from the tax upon the cloth out of which the clothing is made. This tax on cloth was imposed by the paragraph preceding and the second paragraph following the paragraph imposing the tax on ready-made clothing. (13 Stat., 269, 270; *The United States* vs. *Washington Mills*, 5 vol. Internal Revenue Record, p. 146.) If any person is entitled to be exempt from the payment of this tax, he must plead and prove facts that bring him within the provisons that grant him this exemption. This case 6th Int. Rev. Rec. 132

II. The agreed facts do not show that Boylan is

exempted from paying this tax under the 96th section, because (a) they do not show that the pantaloons were manufactured from materials "which have been subject to and upon which internal duties have been actually paid, or materials imported upon which duties have been paid, or upon which no duties have been imposed by law;" for, so far as appears, the pantaloons may have been manufactured out of cloth made within the United States, and purchased by Boylan before any internal revenue tax was imposed on cloth; or, if the pantaloons were manufactured out of cloth subject to internal revenue duties, it does not appear that these taxes have been actually paid; or, if made from materials imported, and upon which duties were imposed by law, that those duties have been paid; because (b) it does not appear that the value of the pantaloons was not more, by five per cent. *ad valorem*, than the value of the materials out of which they were made.

It does appear in the agreed statement that the *cash value* of the materials in open market was more than the contract price, and that the *cost* of the process of manufacture was more than five per cent. of the value of the pantaloons when manufactured. What the *market value* of the pantaloons, when manufactured, was, and whether this *market value* was greater than the *market value* of the materials by five per cent. *ad valorem*, does not appear; nor does it appear what the *actual cost* to Boylan of the materials was, or whether the *agreed price* of the pantaloons was greater than this *actual cost*

by five per cent. *ad valorem*. If any presumption can be drawn from the agreed facts, it is that the increase of value of the pantaloons over the value of the materials out of which they were made was more than five per cent. *ad valorem*. Whether, for the purpose of determining the amount of the increased value under the 96th section, the values are to be estimated by the assessor according to the provisions of the 86th section, or whether the rule provided by the 95th section, whereby "the amount of such increased value is to be ascertained by deducting from the value of thefinished articles, when sold or removed for sale, delivery, or consumption, the cost or value of the original article to the person, firm or company liable to the duty imposed upon the increased value thereof," is adopted, seems immaterial.

III. Boylan has not, by the agreed statement, brought himself within the proviso of the 97th section of the act of June 30, 1864, so as to become entitled to be exempted from paying the additional tax imposed by said act subsequently to the date of the contract on said pantaloons, namely, an additional tax of two per cent. *ad valorem*. The 75th section of the act of July 1, 1862, (12 Stat., 466,) imposed a duty of three per cent. *ad valorem* on all manufactures of cotton, wool, &c., "not in this act otherwise provided for," and clothing was deemed by the Commissioner of Internal Revenue a manufacture within the meaning of this provision, and taxable three per cent. of its full value, in addition to the tax

imposed on cloth by the same act, (12 Stat., 465.) The act of June 30, 1864, imposed a tax on cloth of five per cent. *ad valorem*, and a tax on ready-made clothing, by name, of five per cent. *ad valorem*, so that the additional tax imposed by the act of June 30, 1864, upon the articles to be delivered under Boylan's contract, was a tax of two per cent. *ad valorem*. By the third proviso of the 69th section of the act of July 1, 1862, (12 Stat., 460,) the taxes "on all articles manufactured and sold in pursuance of contracts *bona fide* made before the passage of this act, shall be paid by the purchasers thereof, under regulations to be established by the Commissioner of Internal Revenue." By the 97th section of the act of June 30, 1864, (12 Stat., 273,) persons who had made contracts prior to the passage of that act, and *without other provisions therein for the payment of duties provided by laws enacted subsequent thereto* upon articles to be delivered under such contracts, were authorized and empowered to add to the price thereof so much money as would be equivalent to duties so subsequently imposed upon such articles, and not previously paid by the vendee, and were entitled by virtue thereof to be paid, and to sue for, and recover the same accordingly. Under this last named act, all taxes were assessed and collected of the manufacturers; but in cases falling within the 97th section, the manufacturer was authorized to add the amount of these taxes to the agreed price, and to collect it of the purchaser. And, by the proviso, where the United States were the pur-

chasers under such prior contracts, the certificate of the proper officer of the department by which the contract was made, showing, according to regulations to be prescribed by the Secretary of the Treasury, the articles so purchased by the United States, and liable to such subsequent duty, was to be taken and received, so far as the same was applicable, in discharge of such subsequent duties on articles so contracted to be delivered to the United States, and actually delivered according to such contract. By the terms of this provision, to entitle a contractor with the United States to be discharged from the payment of the additional taxes subsequently imposed, it must affirmatively appear, not only that the contract was made prior to the passage of the act, but that there is in the contract no other provision for the payment of duties imposed by laws enacted subsequently thereto, and that a certificate of the proper officer of the department by which the contract was made, according to regulations to be prescribed by the Secretary of the Treasury, showing the articles so purchased by the United States and liable to such subsequent duty had been obtained. The record does not show these things, and it must be held that the assessment was made in accordance with the proper construction of the provisions of the internal revenue law of June 30, 1864.

E. R. HOAR,
Attorney General.
W. A. FIELD,
Assistant Attorney General.